UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

MADELAINE CHOCOLATE NOVELTIES, INC.

and **Case 29-CA-222257**

LOCAL 1222, UNITED PROFESSIONAL SERVICE EMPLOYEES UNION

Erin Schaefer, Esq., for the General Counsel.
Abraham Borenstein, Esq. and *Brian Maher, Esq.*, for the Respondent.
Matthew Rocco, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

JEFFREY P. GARDNER, Administrative Law Judge. The charge in Case 29-CA-222257 was filed on June 18, 2018. A Complaint and Notice of Hearing was issued on October 30, 2018 alleging Respondent violated Sections 8(a)(5) and (1) by unilaterally changing its past practice of paying a shift differential to employees working afternoon and evening shifts. (GC Exh. 1).[1]

On February 26 and March 4, 2019, I conducted a trial at the Board's Regional Office in Brooklyn, New York, at which all parties were afforded the opportunity to present their evidence. After the trial, the General Counsel and Respondent each filed timely briefs, which I have read and considered.[2]

Upon consideration of the briefs, and the entire record, including the testimony of witnesses and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent admits, and I find, that it is a domestic corporation, with an office and place of business in Rockaway Beach, New York, and has been engaged in the manufacture and

[1] Abbreviations used in this decision are as follows: "Tr." for the Transcript, "GC Exh." for the General Counsel's exhibits, "R. Exh." for Respondent's Exhibits, and "Jt. Exh." for the parties' Joint Exhibits. Specific citations to the transcript and exhibits are included only where appropriate to aid review, and are not necessarily exclusive or exhaustive.

[2] The Charging Party did not file a separate brief.

retail sale of chocolate novelties and favors. Respondent further admits, and I find, that in conducting its business operations during the most recent 12-month period, it has derived gross revenues in excess of $500,000 and purchased and received goods and materials at its Rockaway Beach, New York, facility valued in excess of $5,000 directly from suppliers located outside the State of New York.

Therefore, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I further find that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Background

Since at least 2004, the employees at Respondent's manufacturing operation in Rockaway Beach have been represented for purposes of collective bargaining by Local 1222, United Professional Service Employees Union ("the Union").

The Union represents the following unit:

> All full-time and regular part-time production, maintenance, shipping, receiving and office and clerical employees, employed by the Respondent at its Rockaway Beach, New York, facility and excluding, all salesmen, guards and supervisors as defined in the Act. (GC Exh. 7).

That bargaining relationship has been in effect for over fifteen years, and the Union and Respondent have been parties to a series of collective bargaining agreements ("CBAs"), the most recent of which was effective by its terms from April 1, 2010 to March 31, 2013. (GC Exh. 7). Although that CBA expired, and though the parties have engaged in ongoing successor contract negotiations since that time, no final agreement has been reached, and no new CBA has been signed. The parties agree that Respondent continues to be bound by the expired CBA, and apart from the disputed shift differential at issue here, that Respondent has been otherwise abiding by its terms.

Respondent's Work Shifts

Respondent's operations are divided into three shifts: 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m. and 11:00 p.m. to 7:00 a.m., all of which are covered by the parties' CBA. There is considerable variation in the verbiage used to describe these. For example, the CBA refers to the shifts as the "First Shift," "Second Shift" and "Third Shift." (GC Exh. 7, Art. 7). By contrast, Respondent's payroll records refer to them as the "Day," "Afternoon" and "Night" shifts. (GC Exhs. 11-13).

The Union's Director of Field Service, James Gangale, testified that he refers to the two p.m. shifts, what he calls "off shifts," as the "night shift" and "overnight shift" (Tr. 50). However, when speaking with employees he would refer to the two p.m. shifts as the "afternoon" and "overnight" shifts. (Tr. 52). The underlying charge alleged Respondent unilaterally "revoke[d] night shift differential" and the complaint alleges a unilateral change with respect to the "afternoon and evening" shifts. At all times, the General Counsel has referred to the two p.m. shifts with the language of the complaint. At the trial, Respondent counsel referred to these

p.m. shifts as the "afternoon" and "night" shifts, though in its brief it alternately refers to them as the "afternoon and night" shifts and the "afternoon and evening" shifts.

Notwithstanding this varied verbiage, I find that there is no confusion among the parties as to the existence of these three separate shifts, no confusion as to which shifts were historically paid the disputed shift differential at issue in this case, and no confusion as to which shifts Respondent ceased paying a shift differential to. As such, for the sake of clarity, I will refer in this decision to the 7:00 a.m. shift as the "day" shift and the 3:00 p.m. and 11:00 p.m. shifts at issue as the "afternoon" and "evening" shifts, respectively.

The Disputed Shift Differential

Prior to January 11, 2018, Respondent paid its employees working the afternoon and evening shifts a ten percent shift differential over the wage rates paid to the day shift. Gangale testified that every employee had been receiving this shift differential for at least the 18 years that the Union had been representing the unit, and Respondent presented no evidence to the contrary.[3] The shift differential continued to be paid during both the period before and after Respondent's regular operations were temporarily suspended for approximately nine months in 2012-2013 during the aftermath of Hurricane Sandy.

Although this ten percent shift differential is not separately outlined in the parties' CBA, it is specifically referenced multiple times in the CBA (GC Exh. 7), including in the definition of employees' "regular hourly wage rate" (Art. 9(c)) and in provisions relating to vacation pay (Art. 13(B)), sick leave (Art. 14(A)(1) and (B)(1)), bereavement leave (Art. 15), jury duty (Art. 16) and call-in-pay (Art. 17). Respondent's Chief Administrative Officer Scott Wright acknowledged on cross-examination that for as long as he has worked for Respondent (since late 2001), it has always paid this shift differential. (Tr. 208). Wright acknowledged that Respondent did not cease paying the shift differential until December 31, 2017, when the minimum wage reached $13.00 an hour. He also testified that the shift differential was voluntary.[4]

The shift differential is also confirmed by the payroll records Respondent provided, which plainly reveal that prior to the January 11, 2018 payroll, the afternoon and evening shift employees were paid ten percent more than their similarly situated day shift counterparts. The shift differential was most clearly demonstrated when there was a raise in the New York State minimum wage. After it rose to $9.00 per hour on December 31, 2015, Respondent's day employees earned a minimum of $9.00 per hour, while its afternoon and evening employees earned a minimum of $9.90. When it rose to $11.00 per hour on December 31, 2016, the day employees earned a minimum of $11.00 per hour, while its afternoon and evening employees earned a minimum of $12.10.

Respondent maintains that, following the post-Sandy temporary suspension of operations, it considered all of its employees as newly hired, rather than merely rehired, and that the CBA permits it to pay those new hires the prevailing minimum wage. It's actions at the

[3] I found Gangale to be a very credible witness, straightforward in his answers on both direct and cross examination. He was familiar with the issues, and seemed at all times to be speaking from his personal knowledge, careful to clarify when he was unsure of a particular answer.

[4] I found Wright less credible in much of his testimony. He sounded rehearsed when pressed on the apparent contradictions in his testimony, and appeared not to sincerely believe his own testimony regarding the voluntariness of the payment of the shift differential.

time show otherwise. Notably, none of those employees were paid a severance, as the CBA would have required if they had actually been separated.

In addition, Respondent never treated its rehired employees as new hires. In Wright's words, "we chose to bring people back and not have them sacrifice anything." (Tr. 198). The employees returned to work with no reductions in their rates of pay, which still included the shift differential for afternoon and evening employees. They did not have to sign new Union authorization cards, they maintained their Union seniority, and they had the same vacation benefits based on their original tenure and previous accrual.

Indeed, employees' original pre-storm hire dates and payroll information were provided to its current payroll company after the storm, and those original hire dates were still included in Respondent's payroll records through all of 2018, even after the alleged unilateral change.[5]

ANALYSIS

A. Respondent unlawfully ceased paying a shift differential to unit employees working its afternoon and evening shifts without first notifying and bargaining with the Union.

This case involves Respondent's elimination of a shift differential that it had historically paid to its afternoon and evening shift workers, without giving the Union notice or an opportunity to bargain. I find that Respondent's actions constitute an unlawful unilateral change of a well-established past practice in violation of Section 8(a)(5) and (1) of the Act.

Section 8(a)(5) of the Act provides that it is an unfair labor practice for an employer to "refuse to bargain collectively with the representatives of [its] employees." In general, an employer violates Section 8(a)(5) if it makes a unilateral change to an existing term or condition of employment, without bargaining to impasse with its employees' collective bargaining representative over the proposed change. *NLRB v. Katz*, 369 U.S. 736, 743 (1962).

In cases where a collective bargaining agreement is in effect, an employer's modification of a contractual provision which relates to a mandatory subject of bargaining without the union's consent violates 8(a)(5). *Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass*, 404 U.S. 157, 185 (1971); *St. Vincent Hospital*, 320 NLRB 42 (1995). Similarly, where the change does not involve a violation of specific terms of the parties' agreement, the Board will consider whether it is a departure from the employer's past practices. *Bath Iron Works Corp.*, 345 NLRB 499, 501-502 (2005), affd. sub nom. *Bath Marine Draftmen's Assn. v. NLRB*, 475 F.3d 14 (1st Cir. 2007).

An employer's past practice becomes a term and condition of employment for unit employees when it is long-standing and regularly applied, as opposed to randomly or intermittently applied, and thus may not be altered without offering the union an opportunity to bargain over the proposed change. *Sunoco, Inc.*, 349 NLRB 240 (2007); *Lasalle Ambulance, Inc.*, 327 NLRB 49 (1998); *Intermountain Rural Electric Association*, 305 NLRB 783 (1991). Moreover, during negotiations, not only must an employer give the union notice and an

[5] Respondent sought to introduce a payroll summary, created for purposes of the hearing by its CFO David Reifer, which would purportedly have "clarified" employee hire dates. Because the hire dates already appeared on Respondent's payroll records in evidence, I rejected the proferred exhibit. (R. Exh. 4). As a witness, I found Reifer brief testimony not at all credible. Despite his CFO position, he had never even heard of the shift differential, which Respondent does not dispute it used to pay, until the issue came up in this matter.

opportunity to bargain over the proposed change, it must refrain from making the proposed change unless and until an agreement is reached or an overall impasse has been reached on bargaining for an agreement as a whole. *Bottom Line Enterprises*, 302 NLRB 373 (1991), enf'd. 15 F. 3d 1087 (9th Cir. 1991).

The Board has long made clear that wage incentives, as the shift pay differential is here, are "inseparably bound up with and are thus plainly an aspect of the payment of wages" and therefore constitute a mandatory subject of bargaining. *C & S Industries, Inc.*, 158 NLRB 454, 459 (1966). Indeed, the Board has specifically held that a night shift differential is a mandatory subject of bargaining. *Royal Baking Co.*, 309 NLRB 155 (1992).

The General Counsel maintains that Respondent's regular and long-standing practice of paying a ten-percent shift differential to the afternoon and evening shift employees was an established practice apart from the CBA, and that Respondent was not privileged to change it without offering the Union notice and an opportunity to bargain over the proposed change. Respondent maintains that to the extent it had this history of paying a shift differential to its afternoon and evening shift employees, it was not an established past practice, but rather, a purely voluntary act on Respondent's part that it was free to cease doing at any time.

I find Respondent's consistent and uninterrupted 18+ year practice of paying a ten percent shift differential to its afternoon and evening shift employees constitutes an established past practice and a mandatory subject of bargaining that Respondent was not privileged to unilaterally alter. While the General Counsel demonstrated with Respondent's own payroll records that the shift differential was consistently paid, Respondent offered not a single example of any afternoon or evening employee to whom it was not paid.

Moreover, I find the CBA's multiple references to employees' shift differentials being included in the calculation of various benefits bolsters the argument that employees were entitled to and expected to receive the shift differential Respondent had always paid. Indeed, it had always been understood by all parties that the afternoon and evening shift employees were paid ten percent more than the day shift.

I also find no merit to Respondent's assertion that all shift differentials it previously instituted were subsumed by the New York State minimum wage increase. Employees' wage rates were historically adjusted to reflect minimum wage increases, and the ten percent shift differential had always been added above that new rate. Again, Respondent's own witness acknowledged on cross examination that Respondent had not previously considered this to be the case, and that the only time Respondent took this position was when the minimum wage increased effective December 31, 2017.

Nor does Respondent assert that the Union consented to its ceasing to pay a shift differential in the manner Respondent had done in the past. Instead, Respondent argues, in the face of clear evidence to the contrary, that it never had a past practice of paying a shift differential to its employees. Rather, it maintains that it was always entirely discretionary whether it paid a shift differential. It does not dispute, however, and its own payroll records demonstrate, that it paid the exact same shift differential – 10% more than base pay - to every afternoon and evening employee over the course of many years. And no one testified that Respondent's practice had ever been otherwise than to pay this shift differential for the afternoon and evening shifts until January 2018.

Respondent's claim that it was privileged to change the wages for its employees following its temporary shutdown following hurricane Sandy because the employees were all "new hires" is similarly unpersuasive. "New hires" in 2013 do not have hire dates in the 1900s, as multiple employees on the day, afternoon and evening shifts do as reflected in Respondent's own payroll records as late as 2019. Significantly, Respondent never treated its rehired employees as new hires. The employees returned to work with no reductions in their rates of pay, they did not have to sign new Union authorization cards, they maintained their Union seniority, and they kept their previously-accrued vacation benefits.

Accordingly, I find that Respondent did make a unilateral change when it ceased paying a ten percent shift differential to its afternoon and evening employees, and that none of Respondent's explanations for its actions justify that unilateral change.

B. The Parties Did Not Reach a Lawful Impasse.

Respondent does not appear to be arguing specifically that the parties reached impasse, though it does repeatedly reference the fact that the subject of the shift differential has been part of the parties' ongoing successor CBA negotiations. But even if it were to make that argument, there was insufficient evidence presented to find the parties ever reached impasse in their bargaining for a successor agreement. Indeed, notwithstanding the lengthy duration of the parties' successor contract negotiations, no evidence was presented that the parties had reached the end of overall bargaining.

Respondent does not deny that the Union is the unit's bargaining representative and does not deny that the parties are still bound by the terms of their most recent CBA, even though it expired by its terms as long ago as March 2013. Wright acknowledged that the parties have been bargaining over the course of years, but have not reached an agreement. He specifically stated that "the shift differential was just another element of compensation or benefits that we could negotiate about." (Tr. 174).

Wright further acknowledged that "when the potential impact of the escalating minimum wage began to assert itself and become more and more real to us, we began to look at every place in the contract where we could begin to find elements that we could negotiate about, this being an obvious one. (Tr. 174).

Accordingly, I find that the parties did not reach a lawful impasse in overall bargaining which would privilege Respondent to have made the unilateral change to its practice of paying a shift differential to its afternoon and evening employees.

C. The Complaint Allegations Adequately Match the Charge Language.

Respondent also asserts that the complaint in this matter did not properly align itself with the underlying charge, and requests that the Board should therefore partially dismiss the complaint. Specifically, Respondent seeks to dismiss the complaint as it relates to the afternoon shift employees whose shift differentials were eliminated.[6] Respondent's argument falls short for multiple reasons.

[6] Respondent moved for partial dismissal on this basis at the start of trial. Decision on that motion was deferred, and the parties were instructed to brief the issue.

The charge in this matter alleges that the unilateral change made by Respondent was to "Revoke night shift differential." (GC Exh. 1(A)). Following the Region's investigation of the charge, this complaint issued, alleging that the unilateral change made by Respondent was that it "eliminated the wage Shift Differential pay for employees working in the afternoon shift and evening shift." (GC Exh. 1(F)). Respondent seeks to remove the afternoon employees from inclusion because they were not identified as such in the underlying charge.

There is no disputing that there was no single common verbiage to refer to Respondent's three shifts. The 7:00 a.m. shift was alternately known as the "day" or "first" shift. The 3:00 p.m. shift was alternately referred to as the "afternoon," "night" or "second" shift. The 11:00 p.m. shift was alternately called the "night," "overnight" or "third" shift. And the 3:00 p.m. and 11:00 p.m. were collectively referred to as the "off shifts" or the "p.m. shifts."

While this varied verbiage might seem superficially confusing, I find that there was no confusion among the parties as to the existence of these three shifts, no confusion as to which shifts were historically paid the shift differential at issue in this case (the 3:00 p.m. and 11:00 p.m. shifts), and no confusion as to which shifts Respondent ceased paying a shift differential to on January 11, 2018. The General Counsel's decision to refer to those two shifts at issue as the "afternoon and evening" shifts was therefore reasonable, and made it clear to Respondent precisely what was being alleged.

Moreover, a complaint is not restricted to the precise allegations of the charge. The Supreme Court has long held that a complaint may also allege matters relating to and growing out of the charged conduct. *NLRB v. Fant Milling Co.*, 360 U.S. 301, 309 (1959). The test was later set forth in *Redd-I, Inc.*, 290 NLRB 1115 (1988):

> If a charge was filed and served within six months after the violations alleged in the charge, the complaint (or amended complaint), although filed after the six months, may allege violations not alleged in the charge if (a) they are closely related to the violations named in the charge, and (b) occurred within six months before the filing of the charge.

Id. at 1116 (1988). See also *Old Dominion Freight Line*, 331 NLRB 111 (2000).

In evaluating whether allegations are "closely related" under *Redd-I*, the Board considers:

1) whether the otherwise untimely allegation and the allegations in the timely-filed charge are of the same class, i.e., whether the allegations involve the same legal theory and usually the same section of the Act (legally related);

2) whether the otherwise untimely allegation and the allegations in the timely-filed charge arise from the same factual situation or sequence of events (factually related); and

3) whether the respondent would raise the same or similar defenses to the otherwise untimely allegation and the allegations in the timely-filed charge.

Charter Communications, LLC, 366 NLRB No. 46, slip op. at 2 (2018), reconsideration denied by unpub. Board order issued June 7, 2018 (2018 WL 2761559). See also *Applebee's*, 367 NLRB No. 44, slip op. at 2–3 (2018).

All three factors are clearly satisfied here where (1) the conduct alleged is exactly the same with regard to the afternoon employees as it is regarding the evening employees; (2) they

share an identical set of facts and sequence of events; and (3) Respondent's evidence and defenses are identical with regard to both groups.

Thus, I find no support for the argument that the Respondent was denied due process by the Region's failure to solicit an amended charge based on the facts adduced in its investigation. To the contrary, Respondent was fully aware that it formerly paid a shift differential to its afternoon and evening shift employees, and no longer does so. I find it inconceivable that Respondent could have understood the Union to be challenging its elimination of that shift differential for one group of p.m. workers but not the other.

Accordingly, as Respondent has offered no factually supported or legally sufficient defense to the unilateral change allegation, I find that Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally eliminating the shift differential without providing notice and an opportunity to bargain to the Union and without reaching agreement or overall good faith impasse in bargaining.

Conclusions of Law

1. Respondent, Madelaine Chocolate Novelties, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Local 1222, United Professional Service Employees Union, is a labor organization within the meaning of Section 2(5) of the Act and represents a bargaining unit comprised of workers employed by the Respondent.

3. Since on or about January 11, 2018, Respondent has committed unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act by refusing to bargain collectively with the Union, by unilaterally eliminating the shift differential for its afternoon and evening shift employees without giving notice or an opportunity to bargain to the Union, or reaching a valid impasse.

4. The Respondent's above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that Respondent engaged in conduct in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that it cease and desist from engaging in such conduct and take certain affirmative action designed to effectuate the policies of the Act.

In particular, I shall recommend that, to the extent it has not already done so, Respondent shall cease and desist from altering the shift differential payable to afternoon and evening shift employees, and make whole employees who were not paid the shift differential which Respondent was obliged to make.

I shall also recommend that Respondent be required to notify employees that it will not alter the shift differential for afternoon and evening shift employees, and that its prior elimination of the shift differential has been rescinded.

Therefore, Respondent will be ordered to post and communicate by electronic post to employees the attached Appendix and notice. On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

Respondent, Madelaine Chocolate Novelties, Inc., its officers, agents, and representatives, shall:

1. Cease and desist from

(a) Altering the shift differential payable to afternoon and evening shift employees.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act.

(a) Notify unit employees that it will not alter the shift differential for afternoon and evening shift employees, and that its prior elimination of the shift differential has been rescinded.

(b) Make whole its employees for any loss of pay or other benefits they may have suffered as a result of the unlawful conduct, in the manner set forth in *Ogle Protection Services*, 183 NLRB 662, 683 (1970) enfd. 444 F. 2d 502 (6th Cir. 1971) with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

(c) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 29, within 21 days of the date such awards are fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year for each employee.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of monies due under the terms of this Order.

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Within 14 days after service by the Region, post at its Rockaway Beach, New York location copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 29 after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or internet site and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since January 11, 2018.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. November 1, 2019

Jeffrey P. Gardner
Administrative Law Judge

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.
To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT make unilateral changes to terms and conditions of employment without first bargaining with the Union, Local 1222, United Professional Service Employees Union.

WE WILL NOT unilaterally alter shift differential pay without providing notice and an opportunity to bargain to the Union and without reaching agreement or overall good faith impasse in bargaining.

WE WILL NOT in any like or related manner fail and refuse to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of our employees in the unit or otherwise interfere with your rights under Section 7 of the Act.

WE WILL restore our established past practice with regard to shift differential pay, i.e., paying a 10% enhancement to employees working the afternoon and evening shifts.

WE WILL make our unit employees whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct, plus interest.

Madelaine Chocolate Novelties, Inc.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below:

Two Metro Tech Center, 100 Myrtle Avenue, Suite 5100, Brooklyn, NY 11201-3838
(718) 330-7713, Hours: 9 a.m. to 5:30 p.m.
You may also obtain information from the Board's website: www.nlrb.gov.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/29-CA-222257 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (718) 765-6190.